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**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET No. 2001-65-C

IN THE MATTER OF:)

Generic Proceeding to Establish Prices)
For BellSouth's Interconnection Services,)
Unbundled Network Elements and Other)
Related Elements and Services)
_____)

SURREBUTTAL TESTIMONY OF

MICHAEL STARKEY

On behalf of

**New South Communications, NuVox Communications, Broadslate
Networks, ITC^DeltaCom Communications, KMC Telecom**

JUNE 14, 2001

RETURN DATE: OK DBW
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Rebuttal Testimony of
Michael Starkey

1
2 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

3 A. My name is Michael Starkey.

4 Q. ARE YOU THE SAME MICHAEL STARKEY WHO PREVIOUSLY FILED
5 DIRECT TESTIMONY IN THIS PROCEEDING ON JUNE 5, 2001?

6 A. Yes, I am.

7 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

8 A. My rebuttal testimony will respond to a number of issues raised in the direct testimonies
9 of Ms. Caldwell, Mr. Latham and Mr. Greer filed on behalf of BellSouth
10 Telecommunications, Inc. (hereafter "BellSouth"). Specifically, I will discuss issues
11 raised by BellSouth's witnesses in the areas of non-recurring charges for "xDSL capable
12 loop" products and Unbundled Loop Modification ("ULM" or "loop conditioning")
13 charges.

14 Q. MS. CALDWELL AT PAGE 4 OF HER REBUTTAL TESTIMONY DISCUSSES
15 LOOP CONDITIONING AND RESPONDS TO ISSUES RAISED IN YOUR
16 DIRECT TESTIMONY. PLEASE SHARE YOUR COMMENTS REGARDING
17 MS. CALDWELL'S TESTIMONY IN THIS REGARD.

18 A. Ms. Caldwell states as follows at page 4 of her rebuttal testimony:

19 "...Mr. Starkey contends that because BellSouth studied Loop Conditioning
20 (BellSouth's Unbundled Loop Modification), it violated the Federal
21 Communications Commission's ("FCC's") rules. (Starkey Testimony, page 10,
22 Lines 11-12). To the contrary, the FCC has addressed this very argument and
23 ruled that the incumbent local exchange carrier ("ILEC") has the right to recover
24 the costs associated with modifying the loop. The FCC states: "under our rules,
25 the incumbent should be able to charge for conditioning such loops." (FCC UNE
26 Remand Order. ¶139).
27

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Ms. Caldwell's rebuttal testimony simply misses the point. My primary concern is not that BellSouth be prohibited from recovering costs it incurs to condition its outside plant network, but instead, that BellSouth not be allowed to recover those expenses from its competitors twice. At pages 13-14 of my Direct Testimony I discussed the fact that BellSouth already recovers costs associated with building, modernizing and maintaining its loop network within the monthly recurring charges it assesses competitors who purchase unbundled loops (via its installation and maintenance factors). Allowing BellSouth to assess both its monthly recurring charges and its new, non-recurring ULM charges simply allows BellSouth to recover the same expenses twice. It is this double-recovery that is clearly inconsistent with the FCC's rules as I discussed in my Direct Testimony.

Q. MS. CALDWELL RELIES UPON THE FCC'S UNE REMAND ORDER TO SUPPORT BELL SOUTH'S NONRECURRING, ULM CHARGES. DOES THE UNE REMAND ORDER SUPPORT MS. CALDWELL'S POSITION WHEN READ MORE CAREFULLY?

A. No, it does not. BellSouth and many other ILECs rely most heavily upon the following passages of the FCC's UNE Remand Order to support nonrecurring charges for loop conditioning:

192. In the *Local Competition First Report and Order*, the Commission also stated that requesting carriers would compensate the incumbent LECs for the cost of conditioning the loop.³⁶⁵ Covad and Rhythms argue that, because loops under 18,000 feet generally should not require devices to enhance voice-transmission, the requesting party should not be required to compensate the incumbent for removing such devices on lines of that length or shorter.³⁶⁶

193. We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter.³⁶⁷ Nevertheless, the devices are sometimes present on such loops, and the

incumbent LEC may incur costs in removing them. *Thus, under our rules, the incumbent should be able to charge for conditioning such loops.*³⁶⁸

194. We recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these costs may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits. *We defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules for nonrecurring costs.*³⁶⁹

³⁶⁵ *Id.*

³⁶⁶ Covad Comments at 42-43; Rhythms Reply Comments at 21.

³⁶⁷ See generally *Bellcore Notes on the Network, Loop Transmission*, ch.7.15, (Telcordia, 1997); Regis J. Bates and Donald Gregory, *Voice and Data Communications Handbook Signature Edition*, (McGraw-Hill, New York, 1997), at 76-77.

³⁶⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15692, para. 382.

³⁶⁹ 47 C.F.R. § 51.507(e). See generally 47 C.F.R. §§ 51.501 *et seq.*; *Local Competition First Report and Order*, 11 FCC Rcd at 15875-15876, paras. 749-751.

It is the specific language included in paragraph 193 (which I've highlighted above) that most ILECs believe provides them clear direction to assess nonrecurring charges to recover loop conditioning costs. In doing so, the Incumbents conveniently ignore the emphasized portion of paragraph 194 that immediately follows—even though it is within this paragraph that the FCC points state commissions to its rules at 47 C.F.R. § 51.507(e); generally 47 C.F.R. § 51.501; and paragraphs 749-751 of its *First Report and Order* (Docket No. 96-98) for guidance.

It is important to highlight the relevant portions of the FCC's rules and previous decisions to which the FCC directly guides state commissions for purposes of deciding proper loop conditioning recovery issues. For example, 47 C.F.R. § 51.507(e) states as follows:

47 C.F.R. § 51.507(e)

State commissions may, where reasonable, require incumbent LECs to recover nonrecurring charges over a reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and *shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element. [emphasis added]*.

Likewise, the FCC states as follows at paragraph 750 of its *First Report and Order*:

We require, however, that state commissions take steps to ensure that incumbent LECs do not recover nonrecurring costs twice and that nonrecurring charges are imposed equitably among entrants. A state commission may, for example, decide to permit incumbent LECs to charge the initial entrants the full amount of costs incurred for shared facilities for physical collocation service, even if future entrants may benefit. A state commission may, however, require subsequent entrants, who take physical collocation service in the same central office and receive benefits as a result of costs for shared facilities, to pay the incumbent LEC for their proportionate share of those costs, less depreciation (if an asset is involved). Under this approach, the state commission could require the incumbent LEC to provide the initial entrants *pro rata* refunds, reflecting the full amount of the charges collected from the subsequent entrants. Alternatively, a state commission may decide to permit incumbent LECs to charge initial entrants a proportionate fraction of the costs incurred, based on a reasonable estimate of the total demand by entrants for the particular interconnection service or unbundled rate elements. *[emphasis added]*

Hence, it is obvious that while the Commission may “allow” recovery of loop conditioning costs, it does so only where such costs are (1) calculated in accordance with the FCC’s TELRIC rules, (2) where such recovery would not result in double recovery and, (3) where costs are imposed equitably among new entrants. BellSouth’s proposed loop conditioning charges violate each of these rules and are therefore inappropriate. I discuss in my direct testimony the extent to which BellSouth’s proposed rates penalize the first CLEC to request loop conditioning (i.e., they are not recovered equitably

1 amongst CLECs) and that they recover expenses already recovered in BellSouth's
2 recurring rates (i.e., they result in double-recovery).

3 Q. MS. CALDWELL AT PAGES 30-32 TELLS THE SOUTH CAROLINA
4 COMMISSION THAT COSTS ASSOCIATED WITH LOOP CONDITIONING
5 ARE NOT ALREADY RECOVERED IN THE RECURRING MAINTENANCE
6 FACTOR. PLEASE COMMENT.

7 A. While Ms. Caldwell at page 31 of her testimony answers simply "No" when asked
8 whether "costs associated with loop conditioning are already recovered in the recurring
9 maintenance factor," the argument that follows her answer actually contradicts this
10 answer. Indeed, the remainder of this section of Ms. Caldwell's testimony is an attempt
11 to convince the Commission not that BellSouth's maintenance factors don't include
12 conditioning expenses, but instead, that they don't include enough of these expenses to
13 appropriately compensate BellSouth. Ms. Caldwell's testimony makes this very point as
14 follows: "The magnitude of the costs necessary to support Mr. Starkey's assertion is not
15 reflected in BellSouth's cost development." [Caldwell Rebuttal, page 31, emphasis
16 added]. Two important points must be highlighted regarding Ms. Caldwell's testimony
17 in this respect.

18 First, it is critical that the Commission realize that Ms. Caldwell is admitting in this
19 portion of her testimony, as she has in other jurisdictions, that some amount of loop
20 conditioning expenses are included in BellSouth's "maintenance factor" included in its
21 monthly recurring charges. Hence, even though Ms. Caldwell might suggest that the
22 amount recovered in the maintenance factor isn't sufficient, she can't deny the fact that
23 because BellSouth's non-recurring ULM charges are intended to recover the entirety of
24 BellSouth conditioning costs, any amount already included in the maintenance factor is

1 being double recovered. Simply put, if BellSouth's ULM rates are adopted, BellSouth
2 will double recover some portion of its conditioning expenses.

3 Second, though Ms. Caldwell attempts to convince the Commission that very few
4 conditioning expenses are already included in the monthly recurring rate, her argument is
5 flawed. Ms. Caldwell's point seems to be as follows: (1) BellSouth recovers \$17.56 per
6 UCL-short unbundled loop per year associated with maintenance (*see* DDC-12), (2)
7 however, BellSouth's cost studies indicate that every load coil removal job costs
8 BellSouth \$649.10 (*see* DDC-12), (3) hence, it would require BellSouth 37 years to
9 recover its \$649.10 at only \$17.56 per year ($\$649.10 / \$17.56 = 36.96$ years). There are
10 several holes in Ms. Caldwell's argument.

11 **Q. PLEASE DETAIL THE FLAWS IN MS. CALDWELL'S ARGUMENT.**

12 **A.** First, Ms. Caldwell fails to inform the Commission that BellSouth recovers \$17.56 in
13 maintenance expenses every year for every unbundled loop (and retail loop) it sells, not
14 just those that require conditioning. BellSouth's maintenance expenses are not specific
15 to the loop ordered (or even the type of loop ordered), but are instead, averaged across
16 various types of outside plant facilities (e.g., underground cable will have a different
17 maintenance recovery percentage than will aerial cable, yet, the same maintenance
18 recovery percentage will be applied for all loops that use underground facilities whether
19 those be retail, digital, analog or any other type of loop). This simple fact requires us to
20 significantly modify the computation performed by Ms. Caldwell wherein she suggests
21 37 years would be required to compensate BellSouth for any loop conditioning activities
22 using its maintenance expense factor. For example, assume (as Ms. Caldwell does) that
23 the entirety of the \$17.56 maintenance recovery amount is associated with loop
24 conditioning activities. Assume further, as BellSouth does in its ULM cost study, that

only 20% of all xDSL capable loops will require loop conditioning.¹ Further, assume that xDSL capable loops will comprise 10% of all unbundled loops ordered.² Only xDSL capable loops (or other digital loops) will require conditioning, hence, only 2% of all loops provisioned by BellSouth to its competitors will require conditioning (10% x 20% x 100% = 2%), yet, all loops will generate \$17.56 per year in maintenance cost recovery. Therefore, the proper equation aimed at answering Ms. Caldwell's question (i.e., "over what timeframe will BellSouth's maintenance expenses allow BellSouth to recover conditioning costs?") would be as follows:

$$(\$649.10 \times 2\%) / \$17.56 = 0.74 \text{ years}$$

This equation recognizes that even though BellSouth will be recovering \$17.56 per year in maintenance expenses from each unbundled loop it sells, only 2% of those loops will generate \$649.10 in conditioning expenses. Hence, contrary to Ms. Caldwell's estimate of 37 years, in actuality it will require BellSouth less than one year to recover its conditioning costs using Ms. Caldwell's corrected example.

Q. IS IT FAIR TO ASSUME THAT 100% OF THE MAINTENANCE REVENUES GENERATED BY THE MAINTENANCE FACTOR WILL GO TOWARD RECOVERING CONDITIONING COSTS?

A. No, it is not. In fairness to Ms. Caldwell, the \$17.56 amount is aimed at recovering all of BellSouth's maintenance expenses, not just conditioning. Hence, the equation above isn't perfect. Nonetheless, it is important to point out that BellSouth recovers the \$17.56 maintenance expenses, not only from unbundled loops, but also from all its retail loops

¹ See BellSouth's derivation of its ULM additive in Microsoft Excel file: *SC-mod*, tab: *input_demand*, cell: c:6 (BellSouth's cost studies as modified 4/25/01).

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(in this way BellSouth generates the nearly \$1 Billion in maintenance cost recovery Ms. Caldwell references at page 31 of her testimony). Hence, in actuality, the percentage of total loops requiring conditioning is likely to be far less than the 2% included in the equation above (again driving the payback period toward a smaller number). Likewise, both Mr. Fassett and I explained in our Direct Testimony that the \$649.10 BellSouth proposes as its conditioning costs per dispatch are severely overstated. Both of these points would mitigate the fact that only some portion of the \$17.56 should be included in the equation as specific to loop conditioning. All this being said, one important point remains. That is, Ms. Caldwell's analysis included at page 31 of her testimony (and supported by Exhibit DDC-12), is not indicative of the "payback" period BellSouth experiences via the conditioning expenses already recovered in its maintenance factor. Quite to the contrary, the equation above, while not perfect, is a far better analysis of payback period BellSouth's current maintenance factor would provide it in recovering conditioning expenses and proves that BellSouth is well compensated for conditioning costs via its maintenance factors.

Q. PLEASE SUMMARIZE THE MAIN POINT OF YOUR DISCUSSION ABOVE.

A. My point is simple. Because BellSouth's monthly recurring rate for every unbundled loop recovers approximately \$17 in maintenance expenses every year, the total amount recovered from BellSouth's competitors should more than pay any conditioning expenses BellSouth incurs to remove load coils or bridged tap at a CLEC's request. Indeed, as I explained in my direct testimony (using BellSouth's own internal documentation), the maintenance factor is specifically calculated with the recovery of those conditioning

² It is unlikely that xDSL capable loops will comprise 10% of all unbundled loop orders, however, this assumption makes our estimate more conservative than would a smaller percentage (i.e., a smaller

1 expenses in mind. Hence, BellSouth requires no stand-alone ULM charges to recover its
2 conditioning expenses, and, to the extent the Commission approves such rates in this
3 proceeding, BellSouth will be double-recovering its actual conditioning expenses.

4 **Q. AT PAGE 32 MS. CALDWELL SUGGESTS YOU HAVE MISREPRESENTED**
5 **THE MANNER BY WHICH BELL SOUTH'S MAINTENANCE FACTORS ARE**
6 **CALCULATED. DID YOU MISREPRESENT THIS INFORMATION?**

7 **A.** No, of course not. Ms. Caldwell informs the Commission that my testimony describes
8 BellSouth's maintenance factors as having been "based on maintenance expenses 'over
9 the past three years.'" Ms. Caldwell "corrects" my testimony by stating that in fact,
10 BellSouth's maintenance factors are "based on a projection of future anticipated
11 expenses, not past expenditures." At best, Ms. Caldwell's point is semantic and
12 misleading. While BellSouth's maintenance expense factor is indeed based on future
13 anticipated expenses, BellSouth's makes that projection based upon the expenditures it
14 has made in the past. Hence, my original point remains valid.

15 **Q. WHAT WAS YOUR ORIGINAL POINT.**

16 **A.** In my Direct Testimony I pointed the Commission to information (including BellSouth's
17 exploding digital access line growth patterns) that showed BellSouth has indeed, over the
18 past few years, been required to condition a great number of loops. Hence, maintenance
19 expenses accumulated in those years, and used to project future maintenance expenses
20 included in BellSouth's cost studies, would portray significant conditioning activity (and
21 hence, conditioning expenses). For this reason, the Commission can be assured that
22 BellSouth's monthly recurring rates for its unbundled loops already include significant
23 cost recovery for conditioning activities (via the maintenance factors).

percentage of xDSL capable loops would result in a shorter pay-back period).

1 Q. MS. CALDWELL AT PAGE 33 OF HER TESTIMONY APPEARS TO BE AT A
2 LOSS IN UNDERSTANDING WHERE YOU ARRIVED AT A RANGE OF 35%-
3 50% WHEN DESCRIBING THE LEVEL OF UTILIZATION GENERALLY
4 ASSUMED IN BELL SOUTH'S UNBUNDLED LOOP COST STUDIES. CAN
5 YOU EXPLAIN FURTHER?

6 A. Unfortunately, it is my turn to be confused. After criticizing my testimony for failing to
7 accurately reflect the level of fill included in the BellSouth cost study (I originally
8 provided a range of 35%-50% based on my review of BellSouth's cost studies in 4 other
9 jurisdictions), Ms. Caldwell states that the South Carolina studies include a fill factor of
10 41% for distribution cable (and 74% for feeder). Given that the distribution network
11 dominates the investment required to provision a loop, Ms. Caldwell's own stated fill
12 factor assumptions fall directly into the 35%-50% range included in my testimony.
13 Hence, the reason for her criticism is somewhat of a mystery.

14 Q. IS MS. CALDWELL RIGHT WHEN IN THIS SAME SECTION OF HER
15 TESTIMONY SHE SUGGESTS SUCH FILL FACTORS WOULD NOT
16 SUPPORT YOUR POSITION THAT 50 LOOPS COULD/SHOULD, ON
17 AVERAGE, BE CONDITIONED PER DISPATCH.

18 A. No, she isn't. Ms. Caldwell's own testimony proves my point. Ms. Caldwell states that
19 74% of all feeder facilities are assumed to be unassigned in BellSouth's South Carolina
20 cost study (consistent with a fill factor of 74%). Most copper feeder facilities are
21 comprised of cables including 300 to 900 copper cable pairs. If we apply BellSouth's fill
22 factor to even the smallest of these copper cable complements (74% x 300 copper
23 cables), we find that 78 cables would remain unassigned (approximately 233 would
24 remain unassigned in a 900 pair cable) in the feeder cable. Mr. Fassett has recommended

that 50 cables could be conditioned at one time, on average. Even though Mr. Fassett in his rebuttal testimony explains why 50 unassigned pairs need not necessarily be available in the same cable to condition 50 loops, Ms. Caldwell's point at page 33 of her testimony is poorly made. BellSouth's fill factors included in its South Carolina loop study would support the practice of conditioning 50 pairs per dispatch.

Q. MS. CALDWELL (PAGE 34) IS CRITICAL OF YOUR ALTERNATIVE PROPOSAL REGARDING A MONTHLY RECURRING "ADDITIVE" THE COMMISSION COULD ADOPT IN LIEU OF BELL SOUTH'S PROPOSED NONRECURRING CONDITIONING CHARGES. PLEASE RESPOND.

A. Ms. Caldwell's primary objection seems to be the underlying concept that conditioning activities be considered an "investment" in the facility. Ms. Caldwell expresses these concerns most concisely at page 30 of her Rebuttal. Ms. Caldwell states as follows:

"Costs associated with conditioning a loop for a CLEC, on the other hand, include activities associated with provisioning the service after the loop has been installed. In other words, these are costs BellSouth incurs as a result of a service request."

Contrary to the notion supported by Ms. Caldwell's testimony above, the extent to which expenses are incurred before, during or after "the loop has been installed," in no way impacts the proper manner by which such costs should be booked or recovered. The quote Ms. Caldwell provides from the Part 32 of the FCC's regulations belies her own argument:

"In accounting for construction costs, the utility shall charge to the telephone plant accounts [i.e., capital investment accounts] all direct and indirect costs." Included in the direct cost and indirect costs are the "wages and expenses of employees directly engaged in or in direct charge of construction work."

The FCC's rules clearly show that expenses are booked largely based upon the employee group having been tasked with the particular activity. Hence, if construction personnel

1 remove load coils, bridged tap, or any other type of device generally considered to be
2 conditioning (which they do in the normal part of their job), then those expenses are
3 generally booked to the "plant accounts" wherein investments are recorded (generally
4 through activity based tracking). The same is true for employees who "maintain"
5 BellSouth loops. When those employees remove load coils and/or bridged tap, the
6 expenses they accrue are booked to BellSouth's expenses accounts (as maintenance
7 expenses) and are recovered via the maintenance factor. Because BellSouth's
8 construction and maintenance personnel remove load coils, bridged tap and other
9 devices, Ms. Caldwell's testimony supports the notion included in my direct testimony
10 wherein I contended that BellSouth's conditioning costs are already recovered in either
11 its construction or its maintenance accounts.

12 **Q. ARE CONDITIONING ACTIVITIES RIGHTFULLY CONSIDERED AS**
13 **INVESTMENTS IN THE NETWORK?**

14 **A.** Yes, the important point to make here is that conditioning activities benefit any carrier
15 who will use the conditioned loop in the future, not just the CLEC who originally
16 requests the loop be conditioned. Because the loop is actually transformed into a "digital
17 capable" facility via the conditioning process, and because that loop can now support the
18 digital services of any carrier who may require its use over the facility's life, all carriers
19 who use the facility over its economic life should rightfully contribute to recovering the
20 conditioning expenses. The proper method of recovery for such "investments" is to
21 amortize the requisite expenses over the economic life of the facility and then determine
22 a monthly recurring "annuity" that will compensate the investor (BellSouth) over the
23 useful life of the investment (i.e., monthly recurring rates). That is exactly what
24 BellSouth does when it recovers its conditioning expenses via its existing monthly

recurring rates. Hence, BellSouth's proposed non-recurring rates are not only
duplicative, they are poorly structured.

**Q. MR. LATHAM DISCUSSES YOUR TESTIMONY REGARDING BELL SOUTH'S
NONRECURRING CHARGES ASSOCIATED WITH PROVISIONING XDSL
CAPABLE LOOPS. MR. LATHAM SUGGESTS BELL SOUTH'S NEWLY
INAUGURATED UNBUNDLED COPPER LOOP – NON-DESIGNED (“UCL-
ND”) SHOULD TAKE CARE OF THE CLECS CONCERNS, IS HE RIGHT?**

A. Frankly, the UCL-ND is a big improvement over the xDSL capable previously available
to the CLECs (when BellSouth's enormous nonrecurring charges are taken into
consideration). However, there are still problems with BellSouth's UCL-ND that this
Commission should fix. First, BellSouth states that it may (and presumably will), “roll”
UCL-ND facilities onto different types of facilities as apart of its “continual upgrade to
its network.” [Latham p. 3] Mr. Latham highlights, and rightfully so, that such a “roll
over” may cause the CLEC's xDSL services to fail (especially if the facility is “rolled
over” to a digital loop carrier architecture). Obviously, this makes the UCL-ND a very
risky venture, and, unnecessarily so. Mr. Latham admits that this same risk does not
present itself for BellSouth's “designed loop” products (which carry enormous
nonrecurring charges), but provides no rationale for why this risk exists for the UCL-ND
but not for “designed loops.”

**Q. SHOULD BELL SOUTH BE ALLOWED TO “ROLL-OVER” UCL-ND LOOPS
AND PUT CLEC XDSL SERVICES OUT OF SERVICE?**

A. Of course not. When CLECs purchase an unbundled network element, they are, by
definition, purchasing access to a specific facility (in the case of the UCL-ND, they are
purchasing access to a facility they likely analyzed and reserved pursuant to its specific

1 characteristics via BellSouth's Loop Makeup and Reservation system). BellSouth's
2 willingness to unilaterally move CLECs from a specific loop facility they've analyzed,
3 "qualified" consistent with their own xDSL technologies, reserved and ultimately paid to
4 have provided, can't be squared with its obligations under the Telecommunications Act
5 of 1996. Hence, to make the UCL-ND a workable alternative for CLECs choosing to
6 avoid BellSouth's enormous nonrecurring charges associated with its "designed" xDSL-
7 capable loops, the Commission must prohibit BellSouth from moving CLECs from the
8 UCL-ND facilities they've chosen and paid for.

9 **Q. ARE THERE OTHER PROBLEMS WITH THE UCL-ND?**

10 A. Yes, there are. Mr. Latham at page 4 of his testimony as much as admits that BellSouth
11 may sell a CLEC a UCL-ND that is broken and requires fixing. Mr. Latham suggests
12 that via the "design" process, BellSouth ensures the loop "has continuity from the MDF
13 to the NID before the loop is delivered to the CLEC." BellSouth apparently provides no
14 such assurance with the UCL-ND. [Latham pg. 6] It appears BellSouth will sell a CLEC
15 a UCL-ND that may not be fully connected, i.e., it can provide no type of
16 telecommunications service at all, not even voice-grade service. Obviously, a loop
17 facility that does not provide a simple connection from the MDF to the NID (i.e.,
18 providing an uninterrupted electrical path) doesn't even meet the minimum definition of
19 an unbundled loop as defined by the FCC.³ Again, if the UCL-ND is to be a workable
20 alternative, the Commission must require that BellSouth provide UCL-ND facilities in a
21 contiguous, working fashion in the timeframe generally attributable to provisioning an
22 unbundled loop.

1 Q. BOTH MR. LATHAM AND MS. CALDWELL ARE CRITICAL OF YOUR
2 PROPOSAL TO DEVELOP BOTH "LONG" AND "SHORT" RATES FOR THE
3 UCL-ND JUST AS BELL SOUTH DOES FOR ITS "DESIGNED" UCL
4 PRODUCT. PLEASE RESPOND TO THEIR CONCERNS.

5 A. Mr. Latham seems to suggest that because the UCL-ND requests won't go through
6 BellSouth's "designed" loop process, BellSouth has no way of knowing whether those
7 loops are "long" or "short" consistent with BellSouth's definition (i.e., $\leq 18,000$ ft. \geq).
8 Mr. Latham suggests this makes my recommendation to differentiate UCL-ND loops in
9 the same "long" / "short" fashion BellSouth uses for its "designed" UCL product "not
10 valid." I disagree. CLECs will reserve and purchase UCL-ND's after having reviewed
11 the loop makeup information specific to the loop they order via BellSouth's loop makeup
12 and reservation system. One of the most important pieces of information the CLEC will
13 need to review during this process is the length of the loop. A simple LFACs inquiry
14 will confirm (either for the CLEC or for BellSouth) what the length of the loop is.
15 BellSouth can use this information to provide the same "long" / "short" distinction for
16 the UCL-ND loop as it does for its "designed" siblings. Mr. Latham's testimony seems
17 more aimed at expressing BellSouth's unwillingness, not its inability, to retrieve such
18 information for this purpose.

19 Q. ARE YOU FAMILIAR WITH THE STIPULATION, APPROVED BY THE
20 COMMISSION, AND ENTERED INTO BETWEEN THE COMPETITIVE
21 COALITION AND BELL SOUTH CONCERNING THE WAIVER OF CROSS-

³ See §51.319(a)(1). "Local Loop. The local loop network element is defined as a transmission facility between a distribution frame in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC."

1 **EXAMINATION OF CERTAIN WITNESSES IN FAVOR OF THE ADMISSION**
2 **OF THE DEPOSITION TESTIMONY OF CERTAIN WITNESSES?**

3 A. Yes. The Stipulation concerns BellSouth witnesses Randall S. Billingsley, Walter
4 S. Reid, G. David Cunningham, Ronald M. Pate, and W. Keith Milner, the Competitive Coalition's
5 witness, Jake E. Jennings, and Commission Staff witnesses James E. Spearman and David S.
6 Lacoste. In accordance with the Stipulation, the Competitive Coalition offers the depositions of
7 Walter S. Reid, W. Keith Milner and Ronald M. Pate taken earlier this year in connection with the
8 Alabama and Louisiana UNE cost proceedings. The depositions were made part of the record in
9 those proceedings.

10 **Q. HAVE YOU ATTACHED THESE DEPOSITIONS TO YOUR SURREBUTTAL**
11 **TESTIMONY FOR THE COMMISSION'S REVIEW AND REFERENCE?**

12 A. Yes. The relevant depositions are attached as Exhibit 5.

13 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

14 A. Yes, it does.